



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
House of Representatives of the 116th United States Congress

The Honorable Jamie Raskin
Chairman
Subcommittee on Civil Rights and Civil Liberties
House of Representatives of the 116th United States Congress
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Cummings and Chairman Raskin:

This letter responds to your joint letter dated March 28, 2019, requesting certain documents related to an advisory issued by the Texas Secretary of State's Office on January 25, 2019. We do not interpret your letter to be a subpoena issued under any applicable House Rules.¹ Nor do we consider it a request for information under any applicable federal law.²

For the foregoing reasons, and because the House Committee on Oversight and Reform and its subcommittees lack oversight jurisdiction over constitutional officers of the State of Texas,³ we must interpret your request under Texas state law. Chapter 552 of the Texas Government Code, the Public Information Act (PIA),⁴ governs requests for records of the OAG, as an agency of the State of Texas.⁵ Accordingly, your request is being processed in accordance with the PIA.

¹ See Rules of the House of Representatives (House Rules), H.R. 6, 116th Cong., Rule XI, cl. 2(m), cl. 3(o) (2019); see also TEX. GOV'T CODE § 552.0055 (providing that certain requests for documents under a subpoena are not requests for information under the PIA).

² See 5 U.S.C. § 552; see also *id.* § 551(1); *Rimmer v. Holder*, 700 F.3d 246, 258 (6th Cir. 2012) (recognizing the Freedom of Information Act (FOIA) applies only to the federal government, not state governments); *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 484 (2nd Cir. 1999) ("[I]t is beyond question that FOIA applies only to federal and not to state agencies."); *St. Michael's Convalescent Hosp. v. State of Cal.*, 643 F.2d 1369, 1373 (9th Cir. 1981) (holding FOIA does not apply to state agencies). *Accord Johnson v. Wells*, 566 F.2d 1016, 1019 (5th Cir. 1978) (concluding the Texas State Parole Board is not a federal agency under 5 U.S.C. § 551(1)).

³ See House Rule X, cl. 1(n).

⁴ TEX. GOV'T CODE §§ 552.001–.353.

⁵ TEX. GOV'T CODE § 552.021; see also §§ 552.002; 552.003(1)(A)(i), (2-a).

Pursuant to section 552.301(c) of the Texas Government Code, a request for public information sent by electronic mail must be submitted to the officer for public information or that person's designee. Under the PIA, our timeline to respond to your request began upon receipt of your mailed correspondence on April 2, 2019.⁶

Due to pending litigation, as well as ongoing criminal investigations, our office believes the information at issue is excepted from required public disclosure under the PIA and intends to request a ruling on the applicability of our arguments from the Open Records Division of the OAG. Our office will provide arguments regarding these issues on or before April 16, 2019.

We appreciate the Committee's interest in the OAG's efforts to protect the sanctity of elections in Texas, to promote lawful voting, and to prosecute illegal voting. Notwithstanding political rhetoric to the contrary, our office has real, first-person experience showing the threat to election integrity in Texas is real.

The sheer number of prosecutions brought by our office, and convictions secured by our office, should be enough to confirm that Texans are being deprived of their rightful voice by the casting of illegal ballots. Last year alone, the Election Fraud unit of our office prosecuted 33 defendants for a total of 97 individual violations of election integrity laws, and we continue to have a backlog of at least 70 pending matters.

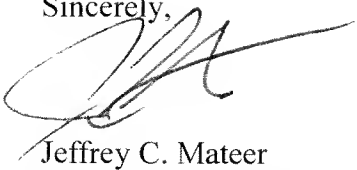
These investigations and prosecutions have taught us that organized voter fraud is happening in our state. Late last year, our office arrested four members of a vote-harvesting ring in Fort Worth that targeted older Texans for mail ballot fraud. A Texas grand jury indicted those defendants for 30 felony voter fraud offenses. Sadly, that situation is not atypical. We made arrests in recent years for similar schemes in Edinburg and Brownsville, and are certain that other cases like these have gone undetected throughout the state.

Aside from these organized election fraud efforts, our prosecutions also establish that individual cases of voter fraud and illegal voting occur. The voter fraud conviction of Rosa Ortega, a Mexican national living in Tarrant County who illegally voted in no less than five elections between 2004 and 2014, made national news in 2017. Again, that case is symptomatic of a broader trend. This office obtained a conviction and 10-year sentence last fall in the case of Laura Garza, a Mexican national, who pleaded guilty to voter impersonation and ineligible voting after she used a citizen's identity to illegally vote in several elections, including the 2016 Presidential election. In January of this year our office arrested Bernice Annette Garza, a Starr County woman who stole the identity of a deceased person and used it to illegally vote in the Democratic party's 2016 primary election and several other elections. These cases and many more like them show the real need to ensure that every person on Texas's voter rolls is an eligible voter.

Illegal voting undermines democracy in our state and deprives lawful voters of an effective voice in the election process. The OAG stands ready to ensure elections in Texas are conducted lawfully and to prosecute individuals who break those laws. We look forward to any assistance and cooperation the Committee can provide in this endeavor.

⁶ See *id.* §§ 552.301(a-1), (c) (establishing the dates on which certain written requests are received).

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Mateer', written over the word 'Sincerely,'.

Jeffrey C. Mateer

First Assistant Attorney General

cc: The Honorable Jim Jordan, Ranking Member
Committee on Oversight and Reform

The Honorable Chip Roy, Ranking Member
Subcommittee on Civil rights and Civil Liberties